

FILED
IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
PEORIA COUNTY, ILLINOIS
PEORIA COUNTY, IL

GARY SANDBERG,

2012 DEC 13 P 12:22

Petitioner-Appellant,

ROBERT M SPEARS

vs.

CASE NO. 12 MR 608

The PEORIA BOARD OF ELECTION
COMMISSIONERS; LACOLIS REED,
Chairman of the PEORIA BOARD OF
ELECTION COMMISSIONERS; JOANN
THOMAS, Vice Chairman of the PEORIA
BOARD OF ELECTION
COMMISSIONERS; CAMILLE GIBSON,
Secretary of the PEORIA BOARD OF
ELECTION COMMISSIONERS;
RANDALL L. EMERT, Objector to
Petitioner's Candidacy; DENISE MOORE,
Objector to Petitioner's Candidacy,

Respondents-Appellees.

THIS CASE IS SET FOR A CASE MANAGEMENT CON-
FERENCE ON 4-8 2013
AT 1:15 AM IN COURTROOM 203 OF THE
PEORIA COUNTY COURTHOUSE. IF THE
DEFENDANT(S) ANSWER(S) MORE THAN 35 DAYS
BEFORE THIS DATE, THEN THE PARTIES SHALL
SCHEDULE A CASE MANAGEMENT CONFERENCE WITH-
IN 35 DAYS OF THE DATE THE ANSWER IS FILED.

PETITION FOR JUDICIAL REVIEW

Petitioner, GARY SANDBERG ("Petitioner"), by his undersigned attorneys,
CUSACK, GILFILLAN & O'DAY, LLC, by ROBERT J. HANAUER, complains and
appeals from two Written Decisions¹ attached hereto as Exhibits 1 and 2 and dated
December 13, 2012, as follows:

1. Respondents-Appellees are The PEORIA BOARD OF ELECTION
COMMISSIONERS; LACOLIS REED, Chairman of the PEORIA BOARD OF
ELECTION COMMISSIONERS; JOANN THOMAS, Vice Chairman of the
PEORIA BOARD OF ELECTION COMMISSIONERS; and CAMILLE

¹ Because both decisions are identical as to the factual findings and rulings, they are hereafter amalgamated and referred to as the "Decision". See *Hagen v. Stone*, 277 Ill. App. 3d 388, 392 (1st Dist. 1995) (10 ILCS 5/10-10.1 permits petitioner-appellant herein to appeal both of the Board's decisions in a single-consolidated petition for judicial review.)

GIBSON, Secretary of the PEORIA BOARD OF ELECTION COMMISSIONERS; RANDALL L. EMERT, Objector to Petitioner's Candidacy; and DENISE MOORE, Objector to Petitioner's Candidacy.

2. This is an appeal from the Decision of the Peoria Board of Election Commissioners ("Board") sustaining certain objections made to Petitioner's candidacy for the office of Peoria City Council-District 1. The Decision was dated December 13, 2012 and was received on December 17, 2012. The Board's Decision denied Petitioner the right to have his name placed on the election ballot for the February 26, 2013 primary election for the Peoria City Council-District 1 based upon Petitioner's purported failure to meet the residency requirements contained in the Illinois Municipal Code.
3. As part of the Board's Decision, the Board made certain factual findings. Among said factual findings, the Board found that Petitioner was a registered voter in the City of Peoria in November, 2012.² Further, no challenge was ever made to whether Petitioner has resided in the City of Peoria for a period of greater than one year because no such challenge could successfully be made: Petitioner has been an active and respected member of the Peoria City Council for nearly two consecutive decades.
4. In denying Petitioner's candidacy to run for the Peoria City Council-District 1, the Board purports to cite the Illinois Municipal Code codified at 65 ILCS 5/3.1-10-5(c) which states as follows:

A person is not eligible for the office of alderman of a ward unless that person has resided in the ward that the person seeks to represent, and a person is not eligible for the office of trustee of a district unless that

² Said factual finding is articulated on page 2, letters G and H of the Board's Decision.

person has resided in the municipality, at least one year next preceding the election or appointment, except as provided in Section 3.1-20-25, subsection (b) of Section 3.1-25-75, Section 5-2-2, or Section 5-2-11. (Emphasis added).

5. Despite the plain language of section 3.1-10-5(c) of the Illinois Municipal Code, the Board decided to get creative when they realized that the Illinois Municipal Code required that Petitioner be permitted to be placed on the primary ballot for Peoria City Council-District 1. At the bottom of page 2 of its Decision, the Board changed the portions emphasized above and replaced the emphasized phrases with 'councilmen' and 'district', respectively. However, that is not what the statute provided. So they used a grammarian's trick to insert bracketed interpolations into the quoted language to make it say what they wanted the language to say. In other words, they used brackets to amend the Illinois Municipal Code to suit their desires. The Board also cited 65 ILCS 5/1-1-2(8) which contains the definitions for the Illinois Municipal Code. "In quotations, brackets are used 'mainly [sic] to enclose material-usually by someone other than the original writer.... [B]rackets enclose editorial interpolations, explanations, translations ..., or corrections. Sometimes the bracketed material replaces rather than amplifies the original word or words.' In short, bracketed words do not serve to distort the meaning of the quoted language." *Simpson v. Shinseki*, 2009 WL 4114383, *1, F.N. 1 (Vet. App.) (created 2009) (citation omitted).
6. However, nowhere in the cited definitions section of the Illinois Municipal Code does it indicate that the words 'alderman' and 'ward' are interchangeable with the words 'councilmen' and 'district', respectively. Thus, there is no authority for making such a liberal amendment to the Illinois Municipal Code. If the Board's

goal was to rule based on its purported view of the spirit of the Illinois Municipal Code, it should have refrained. Statutes are not people; they do not have spirits.

7. There are many different forms of local governments in Illinois. *Inter alia*, there are aldermanic and council-manager forms of local government. Clearly, 65 ILCS 5/3.1-10-5(c) explains the residency requirements for someone campaigning for the position of alderman in an aldermanic form of local government.
8. Peoria is a council-manager form of local government. As such, Peoria does not have aldermen or wards. Peoria has a city council comprised of a mayor, five city-council members representing the five council districts in Peoria, and five at-large city council members.
9. Petitioner argues herein that 65 ILCS 5/3.1-10-5(a) provides the residency requirement for candidates running for political office in a council-manager form of local government. Said statutory provision provides as follows:

A person is not eligible for an elective municipal office unless that person is a qualified elector of the municipality and has resided in the municipality at least one year next preceding the election or appointment, except as provided in Section 3.1-20-25, subsection (b) of Section 3.1-25-75, Section 5-2-2, or Section 5-2-11. (Emphasis added).

10. Petitioner has further support for his claim that the residency requirement is supposed to be as contemplated in section 5/3.1-10-5(a), *supra*. 65 ILCS 5/3.1-10-5(c), which is the section of the Illinois Municipal Code cited by the Board on page two of their Decision, explains that the residency requirement for the district trustee is one year within the municipality, not one year within the district. Thus, even the legislature sought to make a distinction in the very portion of the Illinois Municipal Code upon which the Board purports to rely. Portions of the 2013

Candidate's Guide³ ("Guide"), issued by the Illinois State Board of Elections, provide further support for Petitioner's argument that he meets the residency requirements. The Guide discusses the candidate residency requirements for offices in a council-manager form of local government. Importantly, no distinctions are made among the residency requirements for the various offices held within such a form of local government. In a council-manager form of local government (like that of Peoria), the residency requirement for the offices of "Mayor, Councilmen at-large (and part from districts in some cities), Clerk, [and] Treasurer" is one-year residency in the municipality preceding the election." (Emphasis added). Petitioner respectfully submits to the Court that the parenthetical above that states "and part from districts in some cities" refers to the distinction between cities with a council-manager form of local government that are governed by a city council comprised entirely of at-large councilmen as opposed to those that are comprised of both at-large and district councilmen. See 65 ILCS 5/5-2-18.3.

11. Here, Petitioner has resided in the City of Peoria for a period greater than one year prior to the February 26, 2013 primary election. Further, the record on appeal will be replete with evidence that clearly demonstrated to the Board that Petitioner resides at 1213 S.W. Adams Street, Peoria, Illinois 61602. He established his presence at 1213 S.W. Adams Street, and he demonstrated his intent to remain there. See *Delk v. Board of Election Com'rs of City of Chicago*, 112 Ill. App. 3d 735, 738 (1st Dist. 1983) ("Two elements are necessary to create a residence

³ The referenced portions of said Candidate's Guide were admitted into evidence before the Peoria Board of Election Commissioners.

[under the Illinois Election Code]: physical presence and intent to remain there as a permanent home.”). Thus, Petitioner will have lived in the very district in which he wishes to run for councilmen for a period of greater than 90 days preceding the February 26, 2013 primary election. Further, Petitioner has resided within the municipality for nearly two decades.

12. Pursuant to 10 ILCS 5/10-10.1, judicial review is available in the circuit court and is sought herein. Exhibits 1 and 2 are written decisions that are necessary to confer jurisdiction upon the Circuit Court.

13. Venue is proper in the Tenth Judicial Circuit, Peoria County, pursuant to 10 ILCS 5/10-10.1.

14. Pursuant to 10 ILCS 5/10-10.1, “[t]he Board shall cause the record of proceedings before the electoral board to be filed with the clerk of the court on or before the date of the hearing on the petition or as ordered by the court.”

WHEREFORE, pursuant to 10 ILCS 5/10-10.1, Petitioner-Appellant prays that the Circuit Court make any orders that the Court deems proper for the completion or filing of the record of proceedings of the Peoria Board of Election Commissioners; and for entry of an order preventing the Peoria Board of Election Commissioners from having ballots printed for the February 26, 2013 primary election for the Peoria City Council-District 1 until such time as this Court has rendered a written decision; and to reverse the decision of Defendants-Appellees in whole or in part; and to enter such other orders or instructions to the agency as may be proper after reversing and remanding the decision.

Respectfully Submitted,

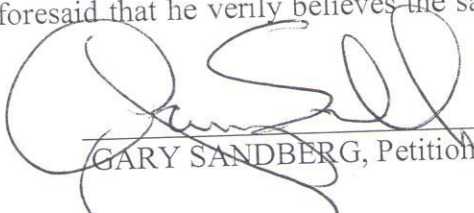
GARY SANDBERG, Petitioner-Appellant,

By: 
ROBERT J. HANAUER, His Attorney

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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.


GARY SANDBERG, Petitioner